



Delhi High Court grants an anti-anti-suit injunction against an order of a foreign court.

Interdigital Technology Corporation & Ors. v. Xiaomi Corporation & Ors.

Case No.	I.A. No. 8772/2020 in CS(COMM) 295/2020
Date	03 May, 2021
Court	Delhi High Court
Coram	Hon'ble Mr. Justice C. Hari Shankar

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1. FACTS & PROCEDURAL HISTORY

A. *Civil Proceedings before the Hon'ble Delhi High Court in CS (COMM) 295/2020*

- 1.1 Interdigital Technology Corporation & Ors. (“**Plaintiffs**”) by way of a civil suit had approached the Hon'ble Delhi High Court (“**High Court**”) alleging an infringement of Standard Essential Patents (“**SEPs**”) by Xiaomi Corporation & Ors. (“**Defendants**”). As per the Plaintiffs, the Defendants manufacture cellular handsets, compliant with 3G & 4G standards that require, for their operation, the technology contained in the SEPs that is held by the Plaintiffs.
- 1.2 According to the Plaintiffs, given that the SEPs are peculiar in nature, they cannot be monopolized and hence are permitted to be availed by different licensees after obtaining the requisite licenses from the Plaintiffs. Moreover, the rates of the SEPs must be fair, reasonable, and non-discriminatory (“**FRAND**”). Determination of the FRAND rates on which the Defendants could obtain licenses from the Plaintiffs formed a moot question of the case.

B. *Proceedings before the Wuhan Intermediate People's Court*

- 1.3 Prior to the institution of the civil suit before the High Court, the Defendants had approached the Wuhan Intermediate People's Court (“**Wuhan Court**”) for an SEP royalty rate-setting suit. The Defendants had sought the fixation of a global FRAND royalty rate on the basis of which, the Defendants could obtain the license from the Plaintiffs.
- 1.4 However, as summons were served in the civil suit before the High Court, on the very same day, the Defendants filed an anti-suit injunction application before the Wuhan Court seeking a restraint against the Plaintiffs from moving forward in the civil suit before the High Court. Pertinently, vide order dated 23rd September, 2020, the Wuhan Court accepted the anti-suit injunction and directed the Plaintiffs to withdraw or suspend any application or lawsuit filed in any other court apart from the Wuhan Court.

C. *The Present Lis*

- 1.5 Being adversely aggrieved by the order of the Wuhan Court granting an anti-suit injunction in favor of the Defendants, the Plaintiffs filed an Interlocutory Application (“**IA**”) before the High Court seeking an injunction against the Defendants, from enforcing against them, the directions issued by the Wuhan Court.¹ In simpler terms, the Plaintiffs sought a peculiar ‘anti anti-suit injunction’ against the Defendants.

2. CONTENTIONS OF THE PLAINTIFFS BEFORE THE HIGH COURT

- 2.1 At the outset, the Plaintiffs assailed the argument that, the order of the Wuhan Court divested the Plaintiffs of the right to prosecute the civil suit before the High Court. The impugned order of the Wuhan Court restrained the Plaintiffs from prosecuting

¹ I.A. No. 8772/2020 in CS(COMM) 295/2020.

their action for protection of the patents granted by the Indian Government. Pertinently, the order of the Wuhan Court was essentially an assault on the sovereign function of the State. Incidentally, as per the Plaintiffs, the suit before the Wuhan Court and the High Court were substantially different. The latter was concerned regarding the infringement of the Indian patents and whereas the former was concerned with the rate-setting of the SEPs.

- 2.2 Secondly, the Plaintiffs contented that, the impugned order of the Wuhan Court was essentially destructive of comity of courts as it blatantly disregarded the rights of the courts in India even though they held the appropriate jurisdiction over the same. This was supported by relying upon the case of *SAS Institute Inc.*² Additionally, to buttress the submissions, it was submitted that, in case where the order of a foreign court was in defiance of the public policy of the domestic court, no principle of comity could inhibit the domestic court from protecting itself against the assault on its public policy.
- 2.3 The Plaintiffs then relied upon *Modi Entertainment*³ and *Dinesh Singh Thakur*⁴ to contend that where the grant of anti-suit injunction would directly interfere with pending proceedings in a foreign court, the Indian court must be slow in granting injunction. However, the order of the Wuhan Court alongside restraining the Plaintiffs had also imposed a cost of Rs. 1 Crore for every day which the Plaintiffs continued to prosecute the civil suit before the High Court. This was contented to be vexatious and oppressive in its operation and effect.
- 2.4 The Plaintiffs contended that, there would be no overlap of the proceedings as the complaint filed by the Defendants before the Wuhan Court was substantially different from the proceedings before the High Court as the scope of FRAND inquiry was different as well. The Plaintiff was not seeking any interference with the prosecution before the Wuhan Court, however, they sought the restoration of the *status quo ante* before focusing on the proceedings before the Wuhan Court.
- 2.5 The Plaintiffs vehemently assailed that they were kept in the dark and had no correspondence regarding the anti-suit injunction application being filed by the Defendants before the Wuhan Court or even the impugned order of the Wuhan Court. It was only in the reply to the IA filed by the Plaintiffs that they became aware of the anti-suit injunction order in favor of the Defendants granted by the Wuhan Court. In summary, the order of the Wuhan Court was passed *ex parte*.
- 2.6 Lastly, the Plaintiffs vehemently sought a direction on the imposition of costs on the Defendants equivalent to the costs levied by the Wuhan Court on the Plaintiffs.

3. CONTENTIONS OF THE DEFENDANTS BEFORE THE HIGH COURT

² *SAS Institute Inc. v. World Programming Ltd.*, (2020) EWCA Civ 599.

³ *Modi Entertainment Network v. W.S.G. Cricket Pte. Ltd.*, (2003) 4 SCC 341.

⁴ *Dinesh Singh Thakur v. Sonal Thakur*, (2018) 17 SCC 12.

- 3.1 *Firstly*, the Defendants contented that, the order of the Wuhan Court did not impede upon the rights of the Plaintiffs to prosecute its suit for infringement of its Indian patent. It only delayed the recovery of the royalty claimed by the Plaintiffs in the civil suit before the High Court. *Secondly*, the Defendants asserted that the two proceedings have issues in common and overlap each other. At this juncture, the Defendants assailed that, the Plaintiffs were exhorting the High Court to proceed on a direct collision path with the Wuhan Court.
- 3.2 Pertinently, the Defendants argued that, before deciding an application for grant of injunction, determination of the FRAND rates at which the license was granted, was a necessary precursor to any finding of infringement purportedly by the Defendants. It was argued that the Plaintiffs were misleading the High Court allegedly claiming that the civil suit pertained to infringement of patents. As the determination of FRAND rates were integral, and a precursor, the issues were substantially overlapping. Due to such overlapping, it may result in two global FRAND rates that would lead to chaos and give rise to vexed issues.
- 3.3 The Defendants contented that the Wuhan Court had appropriate jurisdiction to pass an order for an anti-suit injunction and that there arises no requirement to interfere with the order. Apropos the order imposing Rs. 1 Crore on the Plaintiffs, the Defendants argued that it was only due to the enforcement of the directions and could not be viewed as vexatious or oppressive.
- 3.4 Lastly, the Defendants submitted that, the Wuhan Court had duly issued notice but the Plaintiffs deliberately remained absent. Incidentally, it was submitted that the Plaintiffs were guilty of suppression as they never informed the High Court regarding the pendency of the proceedings in Wuhan.

4. ISSUES

- 4.1 Whether or not the Plaintiffs were entitled to seek an injunction against the enforcement of the anti-suit injunction order passed by the Wuhan Court on 23rd September, 2020?
- 4.2 Whether or not the Wuhan Court was justified in granting the anti-suit injunction order?

5. JUDGMENT OF THE DELHI HIGH COURT

A. *Grant of Anti-anti-suit injunction*

- 5.1 At the outset, the High Court drew a categorization between the types of injunctions that can be granted qua foreign proceedings. Following the categorization, it was observed by the High Court that the present case squarely falls under the category that seeks to inject an order of anti-suit injunction itself. Thereby leading to the coining of the term i.e., anti-anti-suit injunction.
- 5.2 Pertinently, while adjudicating the touchstones for the grant of anti-anti-suit injunction, the High Court did not accept the view as laid down by the Singapore Court

of Appeal in the case of *Sun Travels & Tours*⁵ that the courts must observe a greater degree of caution while dealing with anti-enforcement injunctions. Incidentally, it accepted the view laid down in the case of *SAS Institute*⁶, and considered that, at the end of the day, the interests of justice must prevail. The High Court observed as follows:

“If rendering of justice, in a given case, requires an anti-enforcement injunction to be issued, the Court should not hold back its hands, on some perceived notion of lack of “exceptionality” in the case. This would result in perpetuation of injustice. Justice, it is well settled, is the highest to which the law can attain.”

- 5.3 Noteworthy, the High Court then moved to scan and rely upon the relevant Indian jurisprudence on the captioned issue. The High Court relied upon the case of *O.N.G.C.*⁷ to lay down the contours of the term ‘oppressive’ in the Indian scenario. As per the conditions laid down, (i) when a foreign court is deciding the case as per their domestic law even though it is not the appropriate law or jurisdiction, or (ii) when the genuine party is driven to a tight corner and placed in an extricable situation, or (iii) when the Indian litigant is required to defend the same cause of action, in the Indian court as well as the foreign court, are a few textbook conditions for the term ‘oppressive’. The High Court noted that, in the instant case, the Plaintiffs had certainly been oppressed by the Defendants.
- 5.4 The High Court moved on to place heavy reliance upon the principles enumerated in the case of *Modi Entertainment*.⁸ Firstly, the High Court observed that, even anti-suit injunctions are just another species of injunction that would be governed by the same and general principles applicable to the grant of injunction. Secondly, out of the seven principles enunciated in the case of *Modi Entertainment*⁹, for the purposes of the instant case, the principles applicable are where the foreign proceedings are oppressive or vexatious or where declining injunction would result in defeating the ends of justice and perpetuating injustice. Therefore, the reliance upon the afore-stated cases clearly marked out that the grant of an anti-anti-suit injunction by the High Court was well within its boundaries.

B. Principle of Territoriality

- 5.5 Pertinently, the High Court while discussing the principles for the grant of an anti-suit injunction made certain peculiar observations concerning the principle of territoriality in patent infringement cases. To this end, the High Court relied upon the case of *Magotteaux Industries Pvt. Ltd.*¹⁰, to observe that, patent rights being territorial in nature, are granted by the sovereign state. Thus, any foreign court that crosses its

⁵ (2019) SGCA 10.

⁶ *Supra* note 2.

⁷ (1987) 1 SCC 496.

⁸ *Supra* note 3.

⁹ *Id.*

¹⁰ *Magotteaux Industries Pvt. Ltd. v. AIA Engineering Ltd.*, 2008 (155) DLT 73 (DB).

own jurisdiction to encroach upon the sovereign functions of another states would undeniably warrant the grant of an anti-suit injunction.

C. The Infirmities of the Wuhan Court Order

- 5.6 The High Court categorically observed that, it is not sitting in appeal over the order passed by the Wuhan Court. However, the High Court also noted that, the Wuhan Court must have not passed an order that was in excess of its jurisdiction and went to observe as follows:

“Where, however, the order passed by the Court of one sovereign country, without due justification, entrenches on the lawful invocation of remedies known to law, by a litigant in another sovereign country, the Court in the latter sovereign country is duty bound to protect such incursion on its jurisdiction, and on the fundamental right of its citizen to seek legal redress. No consideration of comity can militate against grant of relief in such a case.”

- 5.7 After taking a holistic view of the entire procedural history of the case, the High Court was not convinced to uphold the order passed by the Wuhan Court. One of the primary and foremost reasons behind the same was premised on the difference in the case of action and subject matter of the cases. The case before the High Court initiated by the Plaintiffs was concerning the perceived infringement, by the Defendants, of six select and specific Indian patents. Whereas, the case before the Wuhan Court concerned the entire portfolio of all SEPs held by the Plaintiffs. The High Court agreed with the arguments advanced by the Plaintiffs on this point.
- 5.8 The High Court while agreeing with the arguments of the Plaintiffs, also observed that, any perceived infringement of Indian patents could only be challenged in India as it had established the principle of territoriality. Thus, the Plaintiffs could not have sought an injunction against the infringement of suit patents in issues, from any forum outside India. This point was entirely overlooked by the Wuhan Court. Hence, the High Court was *forum conveniens* on the adjudication of patent infringements as opposed to the Wuhan Court. For these reasons, the High Court held that, the order of the Wuhan Court was erred on the ground that the instant case before the High Court could lead to the ouster of jurisdiction held by the Wuhan Court. Moreover, vide its order, the Wuhan Court attempted to exclude the jurisdiction of the High Court despite it being *forum conveniens*.

6. CONCLUSION

- 6.1 The High Court while arriving towards the concluding part of the judgment, observed imperative facets concerning the position of law on the grant of anti-suit injunctions. *Firstly*, it overserved that it was totally impermissible for a court in one sovereign jurisdiction to injunct the party before it from pursuing its cause against infringement of its intellectual property before another sovereign jurisdiction, even though the latter jurisdiction is the only competent forum. *Secondly*, mere overlap of one or more

aspects of the case cannot be a ground to grant such injunction that would oust the jurisdiction of the competent sovereign courts. *Thirdly*, in cases where such injunctions are passed would essentially be destructive of the principle of comity of courts and must not even be tolerated for a day. Therefore, the High Court agreed with the submissions of the Plaintiffs and peculiarly granted an anti-anti-suit injunction against the order of the Wuhan Court.

- 6.2 The High Court made certain authoritative observations in light of the order of the Wuhan Court that was termed to be not only violative of the basic premises of justice but also deny the Plaintiffs, the right to even flavor the essence of civil liberty, without due justification.

7. PSL OPINION/ANALYSIS

- 7.1 The judgment strikes multiple chords at once i.e., *(i)* discusses and affirms the stance of the Indian courts to grant an anti-anti-suit injunction, *(ii)* protects the sovereign powers and functions of the Indian jurisdiction, *(iii)* upholds the principle of territoriality in patent infringement cases, and *(iv)* in the Indian context, the Constitutional guarantees of justice, social economic, and political, that are granted to every citizen cannot be sacrificed at the altar of comity.